

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No: 10/624,305)	Attorney
)	Docket Number: 200308790-1
Filed: July 22, 2003)	
)	Confirmation No.: 7802
Inventors: Tom Ruhe et al.)	
)	Group Art Unit: 2625
Title: Variable Support Structure and Media Sheet Separator)	Examiner: Nguyen, Allen H.
)	

**RESPONSE (INCLUDING ELECTION) TO THE OFFICE ACTION
DATED JANUARY 28, 2008**

Applicant elects Claims 12-17 but traverses the restriction on the grounds that the Examiner has failed to make the showing required to support the restriction.

The Examiner asserts that the Application contains six patentably distinct species each of which he identifies according to "the embodiment disclosed in" each of the six independent claims. Of course, claims are definitions of inventions, not species. "Claims themselves are never species." MPEP 806.04(e). The scope of a claim may be limited to a single disclosed embodiment, and thus designated a specific species claim, or a claim may encompass two or more of the disclosed embodiments, and thus designated a generic claim. In either case, the embodiment(s) disclosed in the Specification and Drawings determine whether or not multiple species are disclosed. See MPEP 806.04(d) and (e). The restriction is improper and should be withdrawn for this reason alone.

The Examiner asserts without explanation that "[t]here is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics." Applicants acknowledge that restriction to a single species may be proper under MPEP 806.04(f) if the species are mutually exclusive. The Examiner,

however, has made no showing at all that the asserted species are in fact mutually exclusive under the definition set forth in MPEP 806.04(f):

Claims to different species are mutually exclusive if one claim recites limitations disclosed for a first species but not a second, while a second claim recites limitations disclosed only for the second species and not the first. This may also be expressed by saying that to require restriction between claims limited to species, the claims must not overlap in scope.

The so-called "species" of Claims 11 and 18 would not seem to meet this definition of mutual exclusivity. The structure of Claims 11 and 18 both include a pair of elongated supports supporting a span of flexible material, the supports oriented relative to one another in a generally V shaped configuration such that a distance between the supports at a first part of the span is greater than a distance between the supports at a second part of the span. Thus, Claims 11 and 18 appear to overlap in scope, negating the Examiner's unsupported assertion of mutual exclusivity. Claims 1 and 10 also appear to overlap one another, as well as overlap Claims 11 and 18, with regard to this same support characteristic.

The sheet media input structure of the "species" of Claim 12 is used in the printer of the "species" of Claim 20. Claims 12 and 20, therefore, overlap in scope, negating the finding of mutual exclusivity.

Finally, Applicants note the Claims 1 and 12 are each generic to several of the embodiments reflected in the other so-called "species" independent claims. Indeed, Claims 1 and 12 overlap in scope with one -- a support structure meeting the limitations of Claim 1 can meet the limitations of the support structure of Claim 12, and vice versa.

In view of the significant overlap among the so-call "species" independent claims, the Examiner is urged to reconsider the restriction. If he continues to feel restriction is proper, then he is respectfully requested to specifically point out **and explain** the legal and factual grounds for the restriction in accordance with the relevant provisions of the MEPP. Absent such a showing, the restriction should be withdrawn.

The foregoing is believed to be a complete response to the pending Action.

Respectfully submitted,
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